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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/663,397	09/16/2003	Robert L. Koelzer	01925-P0215A	2908
24126	7590	11/02/2005	EXAMINER	
ST. ONGE STEWARD JOHNSTON & REENS, LLC			KING, BRADLEY T	
986 BEDFORD STREET			ART UNIT	
STAMFORD, CT 06905-5619			PAPER NUMBER	

3683

DATE MAILED: 11/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/663,397	KOELZER, ROBERT L.	
	Examiner	Art Unit	
	Bradley T. King	3683	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 22-25 and 42-68 is/are pending in the application.
- 4a) Of the above claim(s) 23,46 and 61-67 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22,24,25,42-60 and 68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>05</u> .  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election of Species I, Subspecies B, actuator species 2 in the reply filed on 8/04/2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 23 and 61-67 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species and subspecies, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 1/21/2005.

Claim 46 requires a voltage input. This feature appears to be specific the non-elected species having electrical agencies. Claim 46 has also been withdrawn from consideration.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 56-57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 56-57 require a contact device comprising a fixed or floating caliper. The meaning of these limitations is not clear as calipers are normally part of the actuator and do not contact the rotating surface (required by parent claim 55).

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 22, 24-25, 42-43, 48-51 and 68 are rejected under 35 U.S.C. 102(b) as being anticipated by DE 3529743.

DE 3529743 discloses all the limitations of the instant claims including; an engine 10, a supply device driven by said engine; a motor driven by the agency supplied by said supply device, a brake power source driven by said motor; a brake system powered by said brake power source; and a controller 53 in communication with said supply device, said controller having at least one input for receiving signals containing information about the vehicle; wherein said controller determines the rate at which to cause said supply device to supply the agency to said motor, thereby causing said motor to drive said brake power source at a desired rate. Note column 5, lines 5-25 as well as sensors 10a, 112 and control devices 96 and 104.

Regarding claim 24, see hydraulic pump 95 and hydraulic motor 100.

Regarding claim 25, see the reservoir 13.

Regarding claim 42, see input 10a and 89.

Regarding claim 43, note that engine speed is reflective of the throttle position as broadly required by the claim.

Regarding claim 48, note input 112.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 44 and 54-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 3529743 in view of Eslinger et al (US# 5613744).

Regarding claim 4, DE 3529743 discloses all the limitations of the instant claims with exception to the input of information relating to wheel speed. It is well known in the art and further taught by Eslinger et al to utilize wheel speed to control braking systems. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include wheel speed as taught by Eslinger et al as an input in the system of DE 3529743 to allow for ABS braking controls, thereby increasing the safety of the system.

Regarding claim 54, DE 3529743 discloses all the limitations of the instant claims with exception to the particulars of the brake system. Eslinger et al teach an air braking system including a braking mechanism 18, a valve 30 and/or 38 connecting the

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reservoir to the braking mechanism, and a valve actuator connected to the valve (valve actuators are necessarily inherent for electrically controlled valves to operate). It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a reservoir, brake mechanism, valve and valve actuator as taught by Eslinger et al as an obvious means of carrying out braking actuation in the system of DE 3529743, thereby providing controllable brake operation. Regarding claims 55-58, The Examiner takes Official Notice that floating calipers and fixed calipers are well known in the art and recognized alternative structures suitable for an intended purpose. Eslinger et al further teach a brake shoe as well as the broad "caliper". Column 2, lines 60-65. It further would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize floating or fixed calipers or brake shoes in the system of DE 3529743 and Eslinger et al as known in the art and obvious alternative structures for brake actuation. Also note *Ryco, Inc. v. Ag-Bag Corp.*, 857 F.2d 1418, 8 USPQ2d 1323 (Fed. Cir. 1988).

Claims 45 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 3529743 in view of Bruehmann et al (US#6089831).

DE 3529743 discloses all the limitations of the instant claims with exception to receiving an input reflecting air pressure or air dryer temperature. Air pressure and temperature are well known in the art and further demonstrated by Bruehmann et al for controlling compressor operation. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize information pertaining to air

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pressure or air temperature as known and further taught by Bruehmann et al in the system of DE 3529743 to ensure proper air pressure necessary for operation or maintain air temperature within acceptable limits, thereby preventing damage to the system.

Claims 52-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 3529743 in view of Koelzer et al (6439857).

DE 3529743 discloses all the limitations of the instant claims with exception to the explicit disclosure of the details of the air compressor. Swash plate compressors are well known in the art and further taught by Koelzer et al in the brake environment. It would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize a swash plate compressor as known in the art and further taught by Koelzer et al in the system of DE 3529743 as an obvious means of providing compressed air with a compact and structurally simple unit. Also note *Ryco, Inc. v. Ag-Bag Corp.*, 857 F.2d 1418, 8 USPQ2d 1323 (Fed. Cir. 1988).

### ***Response to Arguments***

Applicant's arguments filed 4/25/2005 have been fully considered but they are not persuasive. Regarding Bosch (DE 3529743), note figure 4, sensors 10a and 112, and controls 104 and 96. Also note the disclosure in column 5, second paragraph and the abstract. It is maintained that Bosch disclose pump and motor control to adjust the

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speeds of the devices to the necessary requirements. This control reads upon the claimed rate limitations as broadly recited. It is maintained that the rejections are proper.


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bradley T. King whose telephone number is (571) 272-7117. The examiner can normally be reached on 11:00-7:30 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James McClellan can be reached on (571) 272-6786. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BTK

  
JAMES MCCLELLAN  
PRIMARY EXAMINER 10/5/05  
SPE 3683